

Message Text

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PAGE 01 BERN 02098 121627Z

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EUR/CE FOR SUSAN KLINGAMAN AND IM BOROWSKI (SEC)

E.O. 11652: N/A

TAGS: SZ

SUBJECT: PROGRESS SETTLEMENT

WHAT FOLLOWS IS THE FULL TEXT OF THE NEW VERSION OF THE CONSENT AND UNDERTAKING AS DISCUSSED WITH THE SEC AND ON WHICH THE PARTIES HAVE AGREED UPON. IT FURTHER CONTAINS THE AMENDMENTS IN THE DECREE OF THE SWISS BANKING COMMISSION, ON WHICH AGREEMENT HAS ALSO BEEN REACHED.

BEGIN QUOTE

CONSENT AND UNDERTAKING

THE FEDERAL DEPARTMENT OF THE INTERIOR IN ITS SUPERVISORY CAPACITY OVER THE PROGRESS FOUNDATION HAS APPOINTED A COMMISSIONER ON MARCH 31, 1976, TO TAKE CARE OF THE PROGRESS GROUP; FURTHER, THE FEDERAL DEPARTMENT OF THE INTERIOR HAS APPROVED OF THIS CONSENT AND UNDERTAKING AND OF THE DECREE OF THE SBC AND TAKEN NOTE OF THE STATEMENT OF INTENTION OF THE SEC AND HAS ACKNOWLEDGED THE DECLARATION OF INTENTION OF THE SBC AND HAS EMPOWERED THE COMMISSIONER TO SIGN THE CONSENT AND UNDERTAKING,

PROGRESS FOUNDATION, MONDIAL COMMERCIAL LIMITED, FRIENDS OF AIER FELLOWSHIP FOUNDATION, WORLD ECONOMIC RESEARCH TRUST, REGISTERED AND MONTE SOLE SA (SOMETIMES HEREINAFTER REFERRED TO AS THE 'PROGRESS GROUP') HEREBY:

UNCLASSIFIED

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PAGE 02 BERN 02098 121627Z

I. CONSENT TO THE JURISDICTION OF THE SWISS BANKING

COMMISSION OVER THE MATTERS REFERRED TO IN THE FORM OF THE DECREE ANNEXED HERETO AND THE ENTRY OF A DECREE IN SUCH FORM WITHOUT FURTHER NOTICE.

II. CONSENT TO ANY ACTION TAKEN BY THE SWISS BANKING COMMISSION PURSUANT TO THE FORM OF DECREE ANNEXED HERETO AND ALL SUCH FURTHER DECREES BY THE SWISS BANKING COMMISSION AND ALL ACTIONS BY THE SWISS BANKING COMMISSION, THE AUDITOR OR OTHER PERSONS DESIGNATED BY THE SWISS BANKING COMMISSION AS MAY BE NECESSARY TO ACCOMPLISH THE MATTERS CONTEMPLATED THEREIN.

III. AGREE THAT, UPON ISSUANCE IN THE FORM ANNEXED HERETO, THE DECREE AND ANY OTHER DECREES OF THE SWISS BANKING COMMISSION SHALL BE FINAL AND WAIVE ALL OBJECTIONS TO, AND ALL RIGHTS OF APPEAL FROM, SUCH DECREES.

IV. AGREE THAT, IMMEDIATELY UPON THE ISSUANCE OF THE DECREE OF THE SWISS BANKING COMMISSION, IN THE FORM ANNEXED HERETO, EACH SHALL EXECUTE AND DELIVER TO THE SWISS BANKING COMMISSION A FURTHER WAIVER AND CONSENT CONTAINING ARTICLES I, II, AND III OF THIS CONSENT AND UNDERTAKING AND SHALL EXECUTE SUCH OTHER CONSENTS AND DOCUMENTS IN CONNECTION WITH THE ANNEXED DECREE AND ANY OTHER DECREE ISSUED BY THE SWISS BANKING COMMISSION AS THE SWISS BANKING COMMISSION MAY DETERMINE TO BE NECESSARY OR DESIRABLE TO ACCOMPLISH THE MATTERS CONTAINED IN THE DECREE ANNEXED HERETO.

V. UNDERTAKE THAT EACH WILL NOT, DIRECTLY OR INDIRECTLY THROUGH AFFILIATES, ENGAGE IN ANY ACTIVITY IN VIOLATION OF ANY LAW OF THE U S RELATING TO

A) THE MANAGEMENT OF FUNDS OR ASSETS OF U S CITIZENS, INDIVIDUALLY OR COLLECTIVELY, OR (B) THE OFFER OR SALE OF SECURITIES IN THE UNITED STATES.

VI. UNDERTAKE THAT EACH WILL CO-OPERATE FULLY WITH THE SWISS BANKING COMMISSION AND THE AUDITOR DESIGNATED BY THE SWISS BANKING COMMISSION AND MAKE AVAILABLE TO THEM ALL BOOKS AND RECORDS AND OTHER INFORMATION NECESSARY TO UNCLASSIFIED

UNCLASSIFIED

PAGE 03 BERN 02098 121627Z

CARRY OUT THE DECREES OF THE SWISS BANKING COMMISSION.

VII. AGREE TO BEAR A SHARE OF THE EXPENSES NECESSARY TO CARRY OUT THE DECREE OF THE SWISS BANKING COMMISSION INCLUDING THE EXPENSES OF ERNEST SARGEANT, ESQ. AND AUDITOR UP TO DOLLARS 75,000.-- AS DETERMINED BY THE SWISS BANKING COMMISSION AND SATISFACTORY TO THE SECURITIES AND EXCHANGE COMMISSION.

VIII. THE PROGRESS GROUP SHALL HAVE THE RIGHT TO SUBMIT TO THE SWISS BANKING COMMISSION ALTERNATIVE PROPOSALS FOR INVESTMENT OPPORTUNITIES FOR INVESTORS AND SEEK THE APPROVAL OF THE SWISS BANKING COMMISSION AND AN EXPRESSION OF SATISFACTION OF THE SEC TO SUCH PROPOSALS.

IX. THE CONSENT TO ANY DISTRIBUTION UNDER PARAGRAPH I OR XVII OF THE PROPOSED SWISS BANKING COMMISSION DECREE IS CONDITIONED ON THE ISSUANCE OF AN ORDER OR ORDERS BY THE U S DISTRICT COURT FOR THE DISTRICT OF COLUMBIA PRIOR TO ANY SUCH DISTRIBUTION, WHICH WILL PROVIDE THAT MARCEL STUDER, (THE COMMISSIONER WHO WAS NOT INVOLVED IN ANY BUSINESS ACTIVITIES OF THE PROGRESS GROUP PRIOR TO MARCH 31, 1976, AND WHO WAS APPOINTED ON MARCH 31, 1976, BY THE COMPETENT SWISS AUTHORITIES UNDER WHOSE AUTHORITY HE ACTS. SUCH COMPETENT SWISS AUTHORITIES HAVING APPROVED OF THIS CONSENT AND UNDERTAKING AND THE DECREE OF THE SWISS BANKING COMMISSION AND HAVING EMPOWERED THE COMMISSIONER TO SIGN THIS CONSENT AND UNDERTAKING ON BEHALF OF THE UNDERSIGNED) SHALL NOT PERSONALLY BE LIABLE TO ANY U S INVESTOR SOLELY BY VIRTUE OF HIS SIGNING THIS CONSENT AND UNDERTAKING OR SOLELY BY VIRTUE OF ANY ACTION TAKEN UNDER THIS CONSENT AND UNDERTAKING AND UNDER THE DECREE OF THE SWISS BANKING COMMISSION WHICH HAVE BEEN APPROVED BY THE U S DISTRICT COURT.

THIS CONDITION SHALL NOT APPLY TO THE ASSETS WHICH ARE PAYABLE TO AIER UNDER CERTAIN PROMISSORY NOTES WHICH, ACCORDINGLY, MAY BE PAID FORTHWITH IN KIND WITHOUT OBTAINING SUCH AN ORDER OF THE U S DISTRICT COURT UPON PRESENTMENT OF THE NOTES AND WAIVER OF ANY REQUIREMENT THAT THE NOTES BE PAID OTHER THAN IN KIND, NOR SHALL THE ABSENCE OF SUCH AN ORDER OF THE U S DISTRICT COURT
UNCLASSIFIED

UNCLASSIFIED

PAGE 04 BERN 02098 121627Z

PREVENT THE OTHER PROVISIONS OF THE SWISS BANKING COMMISSION DECREE INCLUDING THE SPECIAL AUDIT AND THE REQUIREMENT OF A REPORT OF A SPECIAL AUDITOR FROM BEING CARRIED OUT.

X. THIS CONSENT AND UNDERTAKING REPLACES THE CONSENT ENTERED ON APRIL 2, 1976.

DECREE OF SWISS BANKING COMMISSION UPON CONSENT OF THE PROGRESS GROUP

PROGRESS FOUNDATION ('PROGRESS'), MONDIAL COMMERCIAL LIMITED ('MONDIAL'), FRIENDS OF AIER FELLOWSHIP FOUNDATION ('FRIENDS OF AIER'), WORLD ECONOMIC RESEARCH TRUST, REGISTERED ('WERTREG') AND MONTE SOLE SA ('MONTE SOLE') (SOMETIMES

HEREINAFTER COLLECTIVELY REFERRED TO AS THE 'PROGRESS GROUP'),
BY THE ATTACHED CONSENT DATED MAY, 1976, HAVING, AFTER
APPROVAL AND AUTHORIZATION BY THE FEDERAL DEPARTMENT OF THE
INTERIOR, CONSENTED TO THE JURISDICTION OF THE SWISS BANKING
COMMISSION OVER THIS MATTER AND TO ITS ISSUANCE OF THIS
DECREE.; THE SWISS BANKING COMMISSION HAVING JURISDICTION OVER
THIS MATTER WHICH IS INTERNATIONAL IN NATURE IN THAT THE GREAT
BULK OF THE ASSETS UNDER THE CONTROL OF THE PROGRESS GROUP
IN SWISS BANKING INSTITUTIONS WERE THE SUBJECT OF INTERESTS
OF U S INVESTORS AND CERTAIN OF THE ACTIONS CONTEMPLATED
BY THIS DECREE EXPECTED TO OCCUR WITHIN THE TERRITORIAL
BOUNDARIES OF THE UNITED STATES; THE UNITED STATES
SECURITIES AND EXCHANGE COMMISSION HAVING INSTITUTED A
CIVIL INJUNCTIVE ACTION IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA (THE 'U S COURT')
AGAINST AMERICAN INSTITUTE COUNSELORS, INC ('AIC'), ET ALNC
CERTAIN ENTITIES IN THE PROGRESS GROUP HAVING INSTITUTED A CIVIL
INJUNCTIVE ACTION IN SWITZERLAND AGAINST SWISS CREDIT BANK,
WHICH SHALL BE DISMISSED WITH PREJUDICE UPON THE EFFECTIVENESS
OF THIS DECREE; THE GOVERNMENT OF SWITZERLAND ON DECEMBER 16,
1975, HAVING FROZEN THE ASSETS OF THE PROGRESS GROUP, WHICH
FREEZE HAS CONTINUED TO DATE;

IT IS HEREBY DECLARED THAT:

FOLLOW CLAUSES I. TO XVI. IN THE ORIGINAL WORDING
OF THE DECREE AS AGREED UPON; CLAUSE XVII. AS FOLLOWS
UNCLASSIFIED

UNCLASSIFIED

PAGE 05 BERN 02098 121627Z

(NEW):

XVII. IN CONNECTION WITH ANY DISTRIBUTION, U S INVESTORS SHALL
HAVE THE OPTION OF HAVING ASSETS TO WHICH THEY ARE ENTITLED
RETURNED TO THE UNITED STATES OR MAINTAINED IN SWITZERLAND
SO LONG AS SUCH ARRANGEMENT IS CONSISTENT WITH THE
LAWS OF SWITZERLAND AND THE UNITED STATES LAWS AND ACCOMPLISHED
IN A MANNER SATISFACTORY TO THE SWISS BANKING COMMISSION AND
THE SECURITIES AND EXCHANGE COMMISSION. PROGRESS GROUP HAS
NO RESPONSIBILITIES FOR ASSURING THAT THE PROVISIONS OF THIS
ARTICLE ARE CARRIED OUT.

SWISS BANKING COMMISSION.
END QUOTE.
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